THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.16868 & 16881 2006

% 11-04-2007

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Ch.Ramanaiah & others

…Petitioners

and

$ The Principal Chief Conservator of Forests,
Mozamjahi Market X roads, Hyderabad & others

…Respondents

! COUNSEL FOR PETITIONERS: Sri S.Ravi

^ COUNSEL FOR RESPONDENTS: G.P.for Forests

< Gist:

> Head Note:

? CITATIONS:

1. 1997(2) SUPREME 221
2. AIR 1999 CALCUTTA 90

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Dated: 11th April 2007

Between:

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COMMON ORDER:

These two writ petitions are filed by the same petitioners, against the same respondents, feeling aggrieved by two separate orders, one passed by the Divisional Forest Officer, Kaghaznagar, and the other, by the Principal Chief Conservator of Forests. For the sake of convenience, the parties are referred to, as arrayed in W.P.No.16868 of 2006.

Petitioners claim to be the pattedars of about Acs.38-00 of land, in Survey Nos.127/22, 127/23 and 127/24 of Kushnepally village of Bejjur Mandal, Adilabad District. The lands are said to be covered by tree growth. With a view to fell the trees and to transport the resultant timber, an application was filed on behalf of the petitioners to the Divisional Forest Officer, Kaghaznagar, the 2nd respondent herein, under A.P. Forest Produce Transit Rules 1970, (for short "the Rules"). Substantial correspondence ensued, before and after the application was filed, and it is not necessary to refer to the same, in detail. Through his order dated 31.3.2006, the 2nd respondent rejected the application of the petitioners, on the ground that the tree growth is in the catchment area of River Pranahitha, and the felling of trees may cause ecological degradation. Reference is also made to the order of the Supreme Court in ***T.N.GODAVARMAN THIRUMULKAPAD v. UNION OF INDIA***[1]

Petitioners appear to have taken the matter to the Principal Chief Conservator of Forest, the 1st respondent herein, feeling aggrieved by the order of rejection passed by the

2nd respondent, through a representation dated 18.4.2006. The 1st respondent called for remarks from the Conservator of Forests, Adilabad. He issued proceedings dated 29.5.2006, observing that no felling or transit permit can be given to the petitioner, in view of the fact that the land in Survey Nos.127/22, 127/23 and 127/24 of Kushnepally, is falling inside the Gudem Reserve Forest, notified under Section 19 of the A.P. Forest Act (for short "the Act").

W.P.No.16868 of 2006 is filed assailing the order, dated 31.3.2003 passed by the 2nd respondent, and W.P.No.16881 of 2006 is filed, against the proceedings dated 29.5.2006, issued by the 1st respondent.

The petitioners contend that the reasons furnished in both these orders are different, from each other, and in a way, the proceedings disclose non-application of mind. It is also stated that after prolonged correspondence, between the Revenue and Forest Authorities of the area, it ultimately emerged that the land is not part of Reserve Forest, and despite the same, the application was rejected, on irrelevant and non-existent grounds.

A detailed counter affidavit and voluminous record as material papers, is filed, on behalf of respondents. It is stated that there is a serious dispute, as to the nature of the land in question, and even the joint survey conducted by the Forest and Revenue officials, did not bring about any clarity, on the issue. It is stated that even assuming that the land is not part of Reserve Forest, it is necessary to preserve the tree growth therein, in view of the specific directions issued by the Supreme Court in its judgment in ***Godavarman's*** case[1].

Sri S.Ravi, learned counsel for the petitioners, submits that the little doubt, that existed as to the identity and location of the land, was clarified, not only through the joint survey conducted by the officials of the Forest and Revenue Department, but also in a detailed report submitted by the District Collector, Adilabad. He contends that the opinion expressed by the officials of the Revenue Department, in such matters, assumes finality, as per the explanation

to Rule 5 of the Rules. Learned counsel submits that the Hon'ble Supreme Court never directed that any private land, unless notified under the relevant statute, must be treated as 'forest'. He further contends that the notification referred to in the proceedings of the 1st respondent, does not cover the land of the petitioners.

Learned Government Pleader for Forests, on the other hand, submits that the revenue records also clearly disclose that the forest growth is existing on the lands in the Survey numbers, referred to above, and that the notifications issued, from time to time, under the Act, reveal that the land is part of the Reserve Forest. She contends that in spite of the surveys were conducted on several occasions, and the dispute still persists, and in that view of the matter, no exception can be taken to the rejection of permits. She also refers to the orders of the Supreme Court, in the context of preservation of tree growth.

The application filed by the petitioners, seeking permission under Rule 3 of the Rules, was pending with the respondents, from the year 2001 onwards. It was dealt with at various stages, and ultimately, the competent authority i.e. the 2nd respondent, passed an order dated 31.3.2006, refusing to accord permission. The order reads as under:

> "Adverting to the subject and reference cited above, the application of Sri Ch.Ramaiah, GPA, dated 4.8.2003 for grant of Form-II permits is hereby rejected. The tree growth in this area applied for felling is the catchment area of river Pranahita and fellings will cause ecological degradation in the area. The area will become ecologically fragile and imbalanced.
>
> The removal of trees and around irrespective of status of land, in this area applied will attract the orders of the Supreme Court dated 22.7.1996. Communicated in Govt.Memo No.8245/For-III/96-2, dated 31.10.1996, wherein the judgment in W.P.Civil No.202/95 dated 22.8.1995 communicated in G.M.No.8245/For-III/96-2, dated 31.10.1996 and further communicated in Principal Chief Conservator of Forests, A.P., Hyderabad Lr.No.54633/96-F1, dated 18.11.1996 will attract in this case. The Supreme Court has ordered that the Government should take into consideration ecological balance of area with respect to vegetation cover."

From this, it is evident that the permission was rejected, only on the ground that

the lands are within the catchment area of Pranahitha River, and the felling of trees would result in ecological imbalance. No reference is made to any dispute, as to the identity, or location of the lands. Reference is made to the order of the Supreme Court in ***Godavarman's*** case[1].

Though not as a statutory appeal, the petitioners have taken the matter to the 1st respondent, who is the Apex Authority of the Forest Department in the State. The 1st respondent issued proceedings, dated 29.5.2006, which reads as under.

> "With reference to the letter 1st cited (representation of the petitioners), it is informed that the Conservator of Forests, Adilabad, vide reference 2nd cited has submitted that the patta land in Sy.No.127/1, 127/22, 127/23 and 127/24 of village Kushnapally Beat, Indergaon Section, Kushnapally is falling inside the Gudem Reserve Forest, which is notified under Section 19.
>
> As the area is reported to be in Reserve Forest, no felling permission can be given."

The 1st respondent did not make any mention to the ecological aspects, or to the orders of the Supreme Court. The sole basis was the notification issued under Section 19 of the Act. The net result is that the application of the petitioners came to be rejected, on three grounds, *viz;*

1) The probable ecological imbalance in the catchment area of Pranahitha River;

2) Directions issued by the Supreme Court in ***Godavarman's*** case[1]; and

3) The area having been notified as Reserve Forest under Section 19 of the Act.

Therefore, it needs to be seen as to whether the grounds of rejection can be sustained in law.

Coming to the first aspect, it may be true that the preservation of ecology

and environment was treated, as a matter of priority. Howsoever laudable the object may be, if the implementation of the same is going to result in infringement of the rights of the citizens, it must be traceable to any statute. The A.P. Forest Act, or the Forest Conservation Act, 1980, do not contain any provision, which prohibits the private individuals from cutting trees on their lands. The A.P. Forest Act provides for the notification and constitution of not only the reserve forests, under Section 4 of the Act, but also the forests of other categories. For example, Section 24 empowers the Government to declare by notification, what are known as "protected forests". Different legal regime operates, in respect of these categories of forests. However, there is nothing in the Act, which restricts the rights of the individuals, *vis-à-vis* the trees that are grown on their private lands, except that the necessary permits under the rules must be obtained, before any forest produce is transported.

The Forest Conservation Act by itself does not contain any definition of 'forest'. That is the reason why the Hon'ble Supreme Court, while dealing with ***Godavarman's*** case[1], had fallen back on the dictionary meaning of the word 'forest'. It is relevant to refer to the relevant portion of the judgment in the said case, wherein an extensive reference is made to the definition of forest. It reads as under:

> "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved protected or otherwise fort he purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership…"

From this, it is evident that the word 'forest' would take in its fold, in the context of the Forest Conservation Act, the lands statutorily recognised as forests, whether designated as reserve, or protected, as provided for under Sections 4 and 23, respectively, of the Act. The important condition is that a notification, as

such, must exist, declaring the land as forest of one category, or the other. In the absence of such a notification, a private land cannot be treated as forest, for the purpose of these enactments.

The powers and functions assigned to various authorities under the A.P. Forest Act and the Rules made thereunder, are to be exercised, to advance the objectives contained therein. Preservation of ecological balance is not a duty, or function, assigned to the said authorities. As observed earlier, in case, the denial of permit is going to result in curtailment of rights, such a course must be traced to a provision of law. Neither in the impugned order dated 31.3.2003, nor in the counter affidavit filed by the 2nd respondent, any reference is made to the provisions of any enactment. Therefore, the stand taken by the 2nd respondent, in this regard, cannot be sustained.

Extensive reference was made by the respondents, to the judgment of the Supreme Court in ***Godavarman's*** case[1]. In that case, the Hon'ble Supreme Court passed a series of orders, from time to time. The one, mentioned in the impugned order, does not have any bearing on the subject. However, if the final order passed by the Supreme Court, which was reported in 1998(1) Supreme 265, or a detailed order that preceded it, reported in 1997(2) Supreme 221, are taken into account, it becomes clear that the emphasis was on preservation of reserve and protected forests and the produce that is derived there from.

The question as to whether the orders passed by the Supreme Court in ***Godavarman's*** case[1], would cover the tree growth, on private land, was dealt with by a Division Bench of the Calcutta High Court in ***SRIRAM SAHA v. STATE OF WEST BENGAL***[2]. After referring to the orders that were passed by the Supreme Court, from time to time, the Calcutta High Court observed as under:

> "What is evident from a reading of the said decision of the Supreme Court and the directions contained therein is that while the Supreme Court has imposed certain bans in respect of undesirable activities in the forests, irrespective of the nature of the forest, the Court however has in more places than one in the decision recorded its directions that the ban which has been imposed by the Supreme Court in respect of forests will not affect felling in any private plantation

> comprising of trees planted in any area which is not a forest. This is therefore a clear and unambiguous direction of the; Supreme Court that the ban will not affect felling of trees in any non-forest private plantation…"

Therefore, if the lands claimed by the petitioners are part of any notified forest, the prohibition would straight away apply. On the other hand, if the lands are not part of any such forest, the petitioners cannot be denied the permission.

A serious dispute is raised, as to the identity of location of the lands. In fact, the 1st respondent rejected the claim of the petitioners, solely on that ground. He made a mention to a notification issued under Section 19 of the Act. Along with their counter affidavit, the respondents filed a copy of the notification, dated 21.7.1972, issued under Section 19 of the Act, in relation to the Gudem Reserve Forest. Detailed boundaries on all the four sides are furnished. The lands situated in various villages, including Kushnepally, are included in it. Serious dispute existed as to whether the lands of the petitioners are covered by this notification.

On receiving the application from the petitioners, the forest authorities, at various levels, have caused verification of the matter, with reference to the notifications, and directed that a joint survey be conducted. It was in this context, that a joint survey was conducted on 4.4.2005, with the participation of the 2nd respondent, Sub-Divisional Forest Officer, Kaghaznagar, Assistant Director of Survey and Land Records, Adilabad, Mandal Revenue Officer, Mandal Revenue Inspector and Mandal Surveyor of Bejjur Mandal. The records of Revenue and Forest Departments were examined, in detail. It is one of the rare cases, where unanimity prevailed, among the participants of the joint survey, as to the outcome of the same. It is apt to refer to some of the paragraphs in it.

> "Moreover, the Revenue records of Forest Block Gudem does not speak inclusion of these patta lands (Sy.No.127) of Kushnepally village within the Reserve Forest Block. The land was measured to locate the above Sy.No. by Chain Survey and as per map and found these Sy.Nos. are out of Reserve Forest".

> "The forest D.F.O. and staff shown the Gazette Notification in Urdu and translated copy in English in which the Reserve boundary line is described and pillars are shown on the ground as there are no fixed field reference of field book for stations in the Gazette Notification. The Gudem Reserve Forest Map with Longitude and Latitude obtained from GIS cell is also fixed on the ground and shown clearly to the Assistant Director, Land Records, Adilabad and his staff. The Assistant Director stated that the Longitude and latitude references and GPs, Geo reference are not accepted by him. The Surveyor, Land records expressed that, there is a need to super impose forest map with Village tounch map, then only patta Sy.No.127/24 can be located on the ground. The Gazette Notification of Reserve Forest Gudem and map is handed over to Mandal Revenue Officer, Bejjur for getting super imposed. The Divisional Forest Officer, Kaghaznagar shown the boundary line of Reserve Forest Gudem fixed in the field and pillars fixed and stations with Geo reference GIS survey map obtained from GIS cell Hyderabad. The said patta Sy.No.127/22, 127/23 and 127/24 is not situated in the Reserve Forest and its location is not clear on the ground to all the official of Survey Land Records, Revenue and Forest presently."

The same incumbent, who passed the order, dated 31.3.2006, is a signatory to this report. It is obviously for this reason that he did not make any mention to the dispute, as to the identity of the land in the order passed by him.

There is another angle to this question. The rules prescribe a detailed procedure for issuance of transit permits. Thorough verification is required to be undertaken, before such permits are issued. Rule 5 of the Rules is relevant in the present context. It reads as under:

> "**5**(1). The Divisional Forest Officer or an officer or person duly authorised by him in this behalf shall, subject to the provisions of the rules, issue a permit in Form-I in respect of forest produce to be removed from the forest areas or government Timber Depots and in Form-II in all other cases. The Divisional Forest Officer may refuse to issue such permits, if he has any doubt either of ownership or the existence of forest produce itself and, may withhold the issue of transit permits till it is proved to his satisfaction that the forest produce that exists lawfully belongs to the applicant.
>
> (2) The Divisional Forest Officer may satisfy himself about the presence of forest produce to be removed and shall determine the number of permits required, keeping in view the estimated quantity of the forest produce.

(3) The Divisional Forest Officer may, for the purpose of issue of permits in Form-II for the forest produce to be removed from private lands, ascertain about the rights and titles over the forest produce from such Revenue Officer of the district, as may be specified by the Conservator of Forests.

(*Explanations are omitted, as being not necessary for the purpose of this case*)

It has to be noted that whenever any dispute or doubt arises, as to the identity of the land, in the context of granting permits, the certificate issued by the Revenue Officer or Authorized Officer, is to be treated as conclusive. In the instant case, the Mandal Revenue Officer, Bejjur, issued a certificate, referable to Rule 5 of the Rules, in the month of April 2001. The certificate contains as many as 20 columns. Column Nos.14, 15, 16, 17 and 19 are important. The endorsement made by the Mandal Revenue Officer, in the said columns reads as under:

"**14:** Whether the M.R.O. has inspected the lands personally, if not why?	**:** The proposed land has been inspected on the spot along with Revenue Inspector and Village Administrative Officer, personally.
15: Has the MRO satisfied himself that the actual location of the land in the enjoyment of the land. occupant corresponds with that in the certified copy of the map issued by the L.R.A. of DOS?	**:** Yes. The pattadar is an exclusive owner and enjoyer of the proposed
16: Have the boundaries of the land been clearly demarcated and if so by whom?	**:** Yes. However the Mandal Surveyor has been demarcated the proposed land. The map of the same is enclosed by Mandal surveyor.
17: State clearly whether ay portion of the land is Government land?	**:** -NO-
19: a) Is the land owner entitled to the timber and other produce?	**:** Yes. The landowner is entitled to The timber and other produce.
b) Is any condition attached to the enjoyment of above title and what it is?"	**:** -NO-

In addition to this, the District Collector had undertaken extensive verification of the matter, with reference to the records of the Revenue and

Forest Departments, and addressed a letter, dated 8.11.2005 to the 1st respondent. The letter runs into 8 typed pages. The concluding portion of the letter reads as under:

> "From the above, it is obvious that these patta lands Sy.No.127/22, 127/23 and 127/24 of Kushnepally village are existing adjoining to the Reserve Forest boundary, but not in the Reserved Forest and the same are outside the Reserve Forests.
>
> In view of the detailed report submitted by the Sub-Collector, Asifabad, vide Rc.No.D/1441/2005, Dt.20.07.2005 and as per joint inspection report dt.30.6.2005 the Sy.Nos.127/22, 127/23 and 127/2, ext.(38.80) acres of Kushnepally village are the patta lands having tree growth on the spot with reference to Revenue Records and village and which are outside the Reserved Forest and hence submitted for favour of ready reference and for further orders."

The respondents are not able to show that any different view had emerged, than the one contained in the certificate issued by the Mandal Revenue, Bejjur, or the proceedings of the District Collector, Adilabad. It is relevant to note that the joint survey was undertaken, with reference to the notification dated 21.7.1972, under Section 19 of the Act, and it was clearly found that the lands are outside the Reserve Forest. The expression of doubt here and there, by the officials of the Forest Department, in their internal correspondence, does not have the effect of shaking the finality attached to the certificate, referable to explanation to Rule 5 of the Rules, or the detailed report submitted by the District Collector.

From the above discussion, it emerges that the rejection of the application of the petitioners was on irrelevant and non-existent grounds.

Before parting with the case, this court places on record the able assistance rendered by the learned counsel for the petitioners, and the learned Government Pleader for Forests. This is one of the rare cases, where, apart from filing a detailed counter affidavit, dealing with all aspects, the respondents have placed before this court the copies of voluminous record, touching the subject.

For the foregoing reasons, the writ petitions are allowed, and the impugned orders are set aside. The 2nd respondent i.e. Divisional Forest Officer, Kagajnagar, is directed to pass fresh orders, within two weeks from the date of receipt of a copy of this order, keeping in view the findings recorded by this court, in this order. There shall be no order as to costs.

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11th April 2007

Note: L.R.copies be marked.
(B/o)
PAN

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[1] 1997(2) SUPREME 221

[2] AIR 1999 CALCUTTA 90